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any way to the present charge; and the discovery of that fact in consequence of a statement made by the appellant to the police cannot make this statement admissible. The learned Government Advocate expressed his own doubts about the admissibility of this statement; and if this statement goes out, it is conceded on behalf of the Crown that the charge must fail.

In this view the reference must be discharged and the appeal must be allowed and the conviction and sentence set aside and the appellant acquitted and set at liberty.

WORT, J.—I agree.

Conviction set aside.

APPELLATE CIVIL.

Before Kulwant Sahay and Allanson, J.J.

KUMAR KAMAKSHYA NARAYAN SINGH

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Legal Practitioners Act, 1879 (Act XVIII of 1879), section 28—agreement for payment of fees for work done in pending cases and in other cases—agreement not in writing and not filed in court—Remuneration not recoverable—Contract Act, 1872 (Act IX of 1872), section 79.

The plaintiff, a mukhtar, sued for the remuneration which he alleged was due to him under an agreement by which he was employed by the Court of Wards (i) to "build up" certain civil cases with a view to the Government Pleader drawing the pleadings in such cases, and (ii) to look after the cases in court after their institution, as a mukhtar.

*First Appeal no. 96 of 1923, from a decision of Babu Phanindra Lal Sen, Subordinate Judge of Hazaribagh, dated the 12th March 1923.

The agreement provided that the plaintiff should be remunerated for "building up" the cases by a certain percentage of the valuation of the suits, and, for his work in court, in accordance with the ad valorem fees provided by the High Court's rules. The agreement was not in writing but was evidenced by a letter from the Court of Wards to the Deputy Commissioner of Hazaribagh containing a proposal to engage the plaintiff on the above terms and by a letter from the Board of Revenue sanctioning the proposal.

Held, that the agreement fell within the provisions of section 28 of the Legal Practitioners Act, 1879, and, those provisions not having been complied with, the plaintiff was not entitled to any remuneration for services rendered under the agreement.

Hazari Lal v. Tilok Chand (1), approved.

Srimati Kamini Debi v. Khetra Mohan Ganguli (2), referred to.

It was argued for the plaintiff that in building up the cases he acted as a servant of the Court of Wards and not as a legal practitioner. On the evidence the High Court held that the plaintiff had not been employed as a servant of the Court of Wards for the purpose of building up the cases in respect of which he claimed to be remunerated.

The provisions of section 28 are wide enough to include services rendered in respect of a business done by pleaders, mukhtars or revenue agents even in connection with cases not pending in court.

Game v. Kye (3) and *Ishan Chandra Kar v. Ram Charan Pal* (4), followed.

Appeal by the defendant.

This was an appeal by the defendant against the decision of the Subordinate Judge of Hazaribagh decreeing the plaintiff's suit for fees for works done by him as a mukhtar on the basis of an agreement. The defendant was a minor and was a ward of the

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court, and the agreement alleged was entered into by the Manager with the sanction of the Court of Wards.

The plaintiff's case was that he was a mukhtar and that his services were requisitioned for the purpose of "building up" a large number of civil cases relating to resumption of mukurrari grants proposed to be instituted by the Court of Wards as representing the estate of the defendant, for the purpose of enabling the Government Pleader to draw up pleadings and to look after the cases in court as a mukhtar. The agreement set up in the plaint was that the plaintiff was to "build up" the cases, and his remuneration for such work was fixed at 6 annas per cent. on the valuation of each suit, subject to a maximum fee of Rs. 200 for one single case; and as regards the work done in connection with cases in court he was to get ad valorem fee according to the rules of the High Court. He alleged that this agreement was entered into in March 1918, that he did "build up" cases and work in court according to the agreement until March 1920 when his services were dispensed with by the Manager, that in this interval he had finished the building up of a large number of cases, and that in other cases he had well nigh completed the work but could not finish them on account of the work being taken away from him by the Manager. These unfinished cases were subsequently finished by the regular staff in the law department of the estate and were mostly filed in court on the 1st April, 1920. The plaintiff stated that he had submitted his bills for the works done, but that full payments had not been made to him in accordance with the agreement, that as the Manager refused to make the payments in spite of service of notice the plaintiff approached the Deputy Commissioner of Hazaribagh for settlement of his dues who ordered certain payments to be made and the balance to be withheld till the disposal of the cases by court. The sums withheld were, however, not paid, whereupon

he again approached the Deputy Commissioner who disallowed the plaintiff's claim, and an appeal to the Commissioner was also dismissed, that the plaintiff ultimately approached the Board of Revenue and the Board by their Resolution, dated the 4th of July, 1921, refused to make payments according to the bills as regards the completed works, and as regards the uncompleted works the Board directed payment at the rate of Rs. 2 a case which came up to Rs. 316 only. The plaintiff accepted payment of the sum of Rs. 316 under protest and then instituted the present suit. The plaintiff gave an account of the sums, which he claimed to be due to him, in two schedules attached to the plaint. Schedule 'A' set out the sums due to him on account of bills for completed works, the total amount under these bills came up to Rs. 3,054-5-6, out of which he gave credit for a sum of Rs. 2,109-12-9 being the amount already paid to him, and he claimed a sum of Rs. 944-8-9 as the balance under those bills. Schedule 'B' contained an account of sums due for works done in uncompleted cases. He stated that in the absence of materials which were in the custody of the defendant he was unable to give the correct account of the sum due to him for these cases, but he estimated the amount at Rs. 3,000. Upon these sums of Rs. 944-8-9 and Rs. 3,000 he claimed damages by way of interest, and his total claim came up to Rs. 4,444-8-9. The plaint was subsequently amended as regards the claim for uncompleted cases in schedule 'B', and the amended claim under this schedule was for Rs. 3,987-7-6. He added a sum of Rs. 1,086-0-9 on account of his claim under schedule 'A' principal with damages, and the total claim came up to Rs. 5,073-8-9.

The defence of the defendant was that the plaintiff was not entitled to anything on account of fees, that whatever work was done by the plaintiff was done in the capacity of a lawyer, and the agreement set up by the plaintiff was not enforceable in view of the provisions of the Legal Practitioners Act. The

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defendant further alleged that the expression "build up civil cases" meant and included all work to be done by the plaintiff till the cases were decided by the court, that the sanction given by the Court of Wards was a temporary one remaining in force till the end of December 1918, and that after the expiration of the period for which the sanction was given, fresh proposals had to be made to the plaintiff which were never accepted by him, that the claim in respect of the cases referred to in schedule 'B' of the plaint was untenable inasmuch as it had not been specified what amount of work had been actually done in those cases, that the only work done by the plaintiff in those cases was to issue notices, and that for such work he had been amply compensated by the payment of Rs. 316.

Various issues were raised, and the Subordinate Judge decided them in favour of the plaintiff. He made a decree for the entire amount claimed under schedule 'A', and as regards the claim under schedule 'B' he made a decree for three-fourths of the amount claimed. He further allowed interest at the rate of 0-8-0 per cent. per month, and accordingly made a decree for a sum of Rs. 3,986-0-9. Against this decision the defendant appealed to the High Court.

Sultan Ahmad (with him *A. B. Mukerji, S. M. Mullick, B. C. De* and *Bindeshri Prasad*), for the appellants.

N. C. Sinha and *S. N. Roy*, for the respondent.

KULWANT SAHAY, J. (after stating the facts set out above, proceeded as follows): The most important point for consideration in this appeal is, whether the plaintiff is entitled to enforce the agreement alleged by him in view of the provisions of section 28 of the Legal Practitioners Act. This section provides that no agreement entered into by any pleader, mukhtar or revenue-agent with any person retaining

or employing him, respecting the amount and manner of payment for the whole or in part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such pleader, mukhtar or revenue-agent shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some court in which some portion of the business in respect of which it has been executed has been or is to be done. The agreement relied upon by the plaintiff was admittedly not in writing signed and filed in court as required by section 28. The evidence of the agreement consists of a letter (Ex. 1), dated the 28th January, 1918, from the Manager, Ramgarh Wards Estate, to the Deputy Commissioner of Hazaribagh, in paragraph 4 whereof it was proposed that the plaintiff, Babu Kalyan Singh, mukhtar, should be employed on a graduated scale of fees: he will be paid 6 annas per cent. as remuneration on the value of the suits built up by him subject to the maximum of Rs. 200 per case, besides under the High Court Rules he will share 15 per cent. of the pleader's fees along with the Government Pleader. This proposal was ultimately sanctioned by the Board of Revenue in their letter (Ex. 1a), dated the 19th of March, 1918, and information of this sanction was in due course conveyed to the plaintiff. The provisions of section 28 of the Legal Practitioners Act have, therefore, admittedly not been complied with.

The learned Subordinate Judge was, however, of opinion that the work done by the plaintiff in building up cases for the defendant was done as a servant of the defendant and not as a legal practitioner as defined in the Legal Practitioners Act, and that, therefore, section 28 of the Act had no application to the agreement set up by the plaintiff. In my opinion the view taken by the learned Subordinate Judge is incorrect. From the correspondence between the plaintiff, the Manager, the Deputy Com-

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missioner, the Commissioner and the Board of Revenue it is apparent that the employment of the plaintiff was in his capacity as a mukhtar and not as a servant. The letter (Ex. 1) of the Manager to the Deputy Commissioner makes it clear that the plaintiff was employed as a mukhtar, he had to build up cases in order to enable the Government Pleader to draw up the plaint and had to look after those cases when instituted in court. In his plaint the plaintiff nowhere stated this his employment was as a servant and not as a mukhtar. In fact the whole trend of the case, as made in the plaint, goes to show that his employment was as a mukhtar. He says that on account of his being engaged by the defendant he was prevented from being engaged by the opposite side. Rule 33 of Part VII, Chapter I, page 167 of the General Rules and Circular Orders (Civil, Vol. I) of the High Court prescribes that any person who having been admitted as a pleader or mukhtar shall accept any appointment whether under Government or not, or shall enter into any trade or business, shall give notice thereof to the High Court who may thereupon suspend such pleader or mukhtar from practice or pass such orders as the said court may think fit. Now, in the present case no such notice was given and, therefore, it must be presumed that the plaintiff who was a mukhtar did not accept any appointment under the defendant but accepted an engagement as a mukhtar. It is contended on behalf of the plaintiff-respondent that the provisions of this rule might have been contravened; but this did not affect the question as to whether the plaintiff accepted any appointment under the defendant. We cannot presume that the plaintiff acted in contravention of the rule laid down by the High Court. We can only presume that he did act in compliance with the rule, and that his employment was not as a servant but as a mukhtar.

It is next argued that assuming that section 28 of the Legal Practitioners Act is applicable, the

agreement set up by the plaintiff is not covered by the terms of the said section. It is contended that the section contemplates agreements for services in respect of business done in connection with cases pending in court and not in respect of business done in cases not pending in court. In my opinion the provisions of section 28 are very wide and comprehensive and they include services rendered in respect of business done by pleaders, mukhtars or revenue-agents even in connection with cases not pending in court. It was so held in *Game v. Kye* (1). The view taken in *Game v. Kye* (1) appears to have been approved of in *Ishan Chandra Kar v. Ram Charan Pal* (2); and the plain language of the section does not leave any doubt in my mind that all agreements between a legal practitioner and his client, whether in connection with cases pending in court or cases not pending in court, fall within the mischief of the section. Sections 28 to 31 of the Legal Practitioners Act have been repealed by Act XXI of 1926 but this does not affect the rights of the parties in the present case. I am, therefore, of opinion that the suit was not maintainable on the basis of the agreement set up by the plaintiff.

It has, however, been argued on behalf of the plaintiff-respondent that even if the plaintiff was not entitled to enforce the agreement, he was entitled to recover reasonable fees for work done, and reliance was placed upon the provisions of section 70 of the Contract Act. In my opinion the plaintiff is not entitled to claim any amount when the agreement upon which he based his claim cannot be enforced. The question was considered in *Hazari Lal v. Tilok Chand* (3) where the learned Judges observed as follows: "Suppose the case of an agreement between pleader and client duly reduced to writing, fixing the remuneration of the pleader, but not filed

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in court. If the pleader, ignoring this contract, were to sue under section 70 of the Contract Act for reasonable compensation for his services, the written contract would be a complete answer to the claim for reasonable compensation. The answer would be that there is no question between us as to what is reasonable compensation: we have agreed as to the compensation, and the plaintiff is either entitled according to that agreement, or is entitled to nothing. Let him enforce the agreement, and the answer would be a good defence". These observations apply with great force to the facts of the present case. The claim is based on an agreement, and that agreement is not enforceable in law. Having regard to the terms of the agreement it is not open to the plaintiff to ask the court to fix a reasonable remuneration, and he cannot be given any decree at all on the basis of a reasonable compensation. Reference has been made to certain Madras and Allahabad decisions in support of the contention that the plaintiff would be entitled to a reasonable compensation; but they were cases where no agreement was set up, and no case has been cited in which a claim was made on the basis of an agreement, and that agreement being held to be not enforceable in law, a decree was made for reasonable remuneration for services rendered. Mookerjee and Carnduff, J.J. in *Srimati Kamini Debi v. Khetra Mohan Ganguly* ⁽¹⁾ referred to the Allahabad and Madras cases and then observed that it was worthy of note that the contrary view had been maintained by the learned Judges of the Punjab Chief Court in *Hazari Lal v. Tilok Chand* ⁽²⁾ just referred to. I am of opinion that the plaintiff cannot in the present case fall back upon section 70 of the Contract Act and claim a reasonable compensation.

In this view of the case it is not necessary to consider the other questions raised in the appeal. Had it been necessary to go into those points I would

(1) (1912-13) 17 Cal. W. N. 45.

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have been inclined to make a decree in favour of the plaintiff for the sum claimed under schedule 'A' of the plaint; but as regards the plaintiff's claim under schedule 'B' of the plaint, I am of opinion that the plaintiff was not entitled to succeed. The evidence shows that he did not "build up" the cases as agreed upon. His own letters to the Manager show that a good deal of work was left undone, and he left the work himself and not that the works were taken away from him, and it is further shown that on account of negligent work the defendant had to suffer loss. It is, however, not necessary to go into these points in view of the fact that the plaintiff is not entitled to maintain the suit on the basis of the agreement set up by him.

I would, therefore, decree the appeal, set aside the decree of the Subordinate Judge and dismiss the plaintiff's suit with costs throughout.

ALLANSON, J. I agree..

Appeal decreed.

APPELLATE CRIMINAL.

Before Mullick and Wort, J.

ZAHURI SAHU

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Evidence Act, 1872 (Act 1 of 1872), section 73—Thumb-impression of accused, power of court to order taking of—refusal of accused to give thumb-impression, inference from—Identification of Prisoners Act, 1920 (Act XXXIII of 1920), section 5.

Where a person charged with having made a false claim on a handnote denied that he had filed the suit in question but declined to allow his thumb-impression to be taken in

*Criminal Appeal no. 25 of 1927, from a decision of S. B. Davis, Esq., I.C.S., Sessions Judge of Monghyr, dated the 2nd February 1927.

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